

1 AN ACT concerning State Government.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 1. Short title. This Act may be cited as the
5 Public Service Accountability Act.

6 Section 5. Legislative intent. The legislature finds
7 that using private contractors to provide public services
8 formerly provided by public employees does not always promote
9 the public interest. To ensure that citizens of this State
10 receive high quality public services at a low cost, with due
11 regard for the taxpayers of this State, the service
12 recipients, and the needs of public and private workers, the
13 legislature finds it necessary to regulate privatization
14 contracts and to protect those workers who report conditions
15 and practices that impact on the efficiency and quality of
16 public services provided by private contractors. The
17 legislature further finds it necessary to ensure that access
18 to public information guaranteed by the Freedom of
19 Information Act is not in any way hindered by the fact that
20 public services are provided by private contractors.

21 Section 10. Definitions. For purposes of this Act:

22 "State agency" or "agency" means executive offices,
23 departments, divisions, bureaus, authorities, bodies
24 corporate and public of the State, boards, commissions, or
25 other offices or officers in the executive branch of State
26 government.

27 "Employee of a private contractor" means a worker
28 directly employed by a private contractor or subcontractor or
29 an independent contractor that provides supplies or services
30 to a private contractor. This term includes former employees

1 of a private contractor or subcontractor and former
2 independent contractors.

3 "Discrimination or retaliation" means a threat,
4 intimidation, or any adverse change in an employee's wages,
5 benefits, or terms or conditions of employment as a result of
6 the employee reporting a violation of this Act. In the case
7 of a person who is not an employee of the private contractor,
8 this term includes any adverse action taken against the
9 person or the person's employer as a result of reporting a
10 violation of this Act, including the cancellation of or
11 refusal to renew a contract with the person or the person's
12 employer.

13 "Services" means, with respect to a private contractor,
14 all aspects of the provision of services provided by a
15 private contractor pursuant to a privatization contract, or
16 any services provided by a subcontractor of a private
17 contractor.

18 "Person" means an individual, corporation, partnership,
19 firm, organization or association acting individually or as a
20 group, institution, federal, State, or local governmental
21 entity, or any other public or private entity.

22 "Privatization contract" means an agreement or
23 combination or series of agreements by which a
24 non-governmental person or entity agrees with a State agency
25 to provide services valued at \$100,000 or more that are
26 substantially similar to and in lieu of services that are
27 being provided by regular employees of an agency upon or
28 after the effective date of this Act and that result in the
29 reduction in force of at least one permanent, classified
30 employee. Notwithstanding any provision of this Act to the
31 contrary, any agreement entered into prior to the effective
32 date of this Act, including any amendments or renewals of
33 those agreements, shall not be considered a privatization
34 contract. This Act shall not apply to contracts if any of the

1 following apply:

2 (1) The services are not available within the
3 agency or are of such a highly specialized or technical
4 nature that the necessary knowledge, skills, or expertise
5 is not available within the agency;

6 (2) The services are incidental to a contract for
7 the purchase or lease of real or personal property;

8 (3) There is a demonstrated need for an
9 independent audit, review, or investigation;

10 (4) The State is not able to provide equipment,
11 materials, facilities, or support services in the
12 location where the services are to be performed;

13 (5) The contract is for professional services that
14 are typically rendered on a case-by-case or
15 project-by-project basis, such as legal, professional
16 engineering, structural engineering, land surveying, or
17 architectural services, and the services are: (i) limited
18 to the duration of the project, normally not to exceed 2
19 years, or (ii) are provided on an intermittent basis for
20 the duration of the contract.

21 (6) The need for services is urgent, temporary, or
22 occasional, such that the time necessary to hire and
23 train employees would render obtaining the services from
24 State employees imprudent. The contract for urgent,
25 temporary, or occasional services shall be limited to 90
26 days' duration, with any extension subject to review and
27 approval;

28 (7) Efforts to recruit State employees to perform
29 work authorized by law have failed because no applicant
30 meeting the minimum qualifications has applied for the
31 job;

32 (8) The contract is for services of private
33 counsel;

34 (9) The contract is for services for training

1 courses that can not be provided by current State
2 employees;

3 (10) The contract is for highway, structure,
4 airport, or transit construction or for building and
5 structure construction;

6 (11) The contract includes the purchase of care, as
7 defined in the Illinois Procurement Code, and facilities
8 licensed under the Nursing Home Care Act of 1971;

9 (12) The contract includes a grant, as defined in
10 the Illinois Procurement Code;

11 (13) There is a conflict of interest; or

12 (14) The agreement was entered into prior to the
13 effective date of this Act, including any agreement
14 resulting from a rebidding or previously privatized
15 service or an agreement renewing or extending a
16 privatization contract.

17 "Private contractor" means any entity that enters into a
18 privatization contract as that term is defined in this
19 Section.

20 "Public employee" means an employee of any State
21 department or agency.

22 "Public record" means a public record as defined in the
23 Freedom of Information Act, and also includes any document
24 relating to the privatization contract or performance under
25 the privatization contract, prepared, received, or retained
26 by a contractor or subcontractor whether that document be
27 handwritten, typed, tape-recorded, printed, photocopied,
28 photographed, or recorded by any other method but excluding
29 those documents that would be considered as exemptions under
30 the Freedom of Information Act which include trade secrets,
31 bid proposals, formulae, and designs.

32 "Subcontractor" means a subcontractor of a private
33 contractor for work under a privatization contract or an
34 amendment to a privatization contract.

1 Section 15. Privatization contracts; requirements.

2 (a) No State agency shall make any privatization
3 contract and no privatization contract shall be valid unless
4 the State agency and the contractor comply with the
5 requirements of this Act, including listing those specified
6 provisions in the privatization contract as required by this
7 Act.

8 (b) The State agency shall prepare a specific written
9 statement of the services to be provided under the
10 privatization contract, including the specific quantity and
11 standard of quality of the subject services. This statement
12 shall be a public record, shall be filed in the agency, and
13 shall be published in the State register.

14 (c) For each position in which a contractor will employ
15 a person pursuant to the privatization contract, the minimum
16 compensation to be paid for the position shall be:

17 (1) the greater of the wage rate paid at step one
18 of the grade or classification under which an agency
19 employee whose duties are most similar is paid plus
20 provision of comparable health insurance and pension
21 contributions equivalent to the benefit paid by the
22 agency for those employees or the cash value of the
23 benefit; or

24 (2) the private sector compensation rate, or
25 prevailing rate, including the value of health and other
26 benefits, for that position as determined by the
27 Department of Labor.

28 (d) No amendment to a privatization contract shall be
29 valid if it has the purpose or effect of avoiding any of the
30 requirements of this Act.

31 (e) Every privatization contract shall contain
32 provisions requiring the contractor to offer available
33 employee positions pursuant to the contract to qualified
34 regular employees of the agency whose State employment is

1 terminated because of the privatization contract. Every
2 contract shall also contain provisions requiring the
3 contractor to comply with a policy of nondiscrimination and
4 equal employment opportunity for all persons and to take
5 affirmative steps to provide equal opportunity for all
6 persons.

7 (f) Every privatization contract shall contain
8 provisions regarding the process for determining whether or
9 not to disclose a particular record or type of record. The
10 privatization contract shall specify who is responsible for
11 determining whether or not disclosure is required and shall
12 outline the liability of the parties to the contract for
13 failure to disclose as required by either the Freedom of
14 Information Act or this Act.

15 Section 20. Review of contract costs.

16 (a) Any State agency considering whether to enter into a
17 privatization contract shall prepare a comprehensive written
18 estimate of the costs of regular agency employees providing
19 the subject services in the most cost-efficient manner. The
20 estimate shall include all direct and indirect costs of
21 regular agency employees providing the subject services
22 including, but not limited to, pension, insurance, and other
23 employee benefit costs. Upon completion of the cost estimate,
24 the State agency shall notify any employee organization
25 representing agency employees who may be affected and provide
26 a copy of the written estimate and notification of
27 consideration to enter into a privatization contract. For the
28 purposes of this estimate, any employee organization may
29 propose amendments to any relevant collective bargaining
30 agreement to which it is a party. An employee organization
31 must submit amendments for consideration within 35 working
32 days prior to the final day for the agency to receive sealed
33 bids. This estimate shall remain confidential until after the

1 final day for the agency to receive sealed bids for the
2 privatization contract at which time the estimate shall
3 become a public record, shall be filed with the agency, and
4 shall be published in the State register.

5 (b) Any State agency required to complete a written
6 estimate of costs evaluation as detailed in subsection (a) of
7 this Section shall also prepare a community impact evaluation
8 that shall be submitted to the General Assembly when the
9 issuance of a privatization contract would result in the
10 closure of a State facility or the layoff of the lesser of 50
11 employees or 50% of the staff of a State facility or agency.
12 A community impact evaluation shall also be submitted to the
13 General Assembly when a private entity that holds a
14 privatization contract with a State agency seeks to layoff
15 the lesser of 50 employees or 50% of the staff performing
16 work pursuant to the privatization contract. Any time a
17 community impact evaluation is required pursuant to this Act,
18 a report shall be presented to the General Assembly no later
19 than 3 months prior to the planned issuance of a
20 privatization contract or the implementation of a facility
21 closure or the layoff of employees. The community impact
22 evaluation shall be in the form of a report to the General
23 Assembly and shall include, but not be limited to, the
24 following:

25 (1) State revenues expected to be saved as a result
26 of the proposed layoff or facility or agency closing;

27 (2) the rationale for the layoff or facility or
28 agency closing;

29 (3) the function and duties of the State employees
30 that will be laid off;

31 (4) whether the function and duties of the State
32 employees to be laid off will be performed by another
33 section of State government, and if so, which section;

34 (5) the economic impact on the community where the

1 proposed layoff or closure of a facility or agency is
2 located;

3 (6) the analyses of current and projected economic
4 and labor conditions of the communities affected by the
5 proposed layoff or facility or agency closure;

6 (7) any other data that pertains to the economic
7 and labor impacts on Illinois communities as a result of
8 the proposed layoff or facility or agency closing; and

9 (8) any other data that the General Assembly may
10 request concerning the proposed layoff or facility or
11 agency closing.

12 (c) The agency shall publicly designate the bidder to
13 which it proposes to award the privatization contract. In
14 selecting a contractor, the agency shall consider the
15 contractor's past performance and its record in this State or
16 any other state of compliance with federal, state, and local
17 laws, including the disclosures and certification
18 requirements required by this Act. A bidder who does not
19 satisfy the disclosure and certification requirements of this
20 Section shall not be awarded a privatization contract under
21 this Act.

22 (d) The agency shall prepare a comprehensive written
23 analysis of the contract cost based upon the designated bid,
24 specifically including the costs of transition from public to
25 private operation, of additional unemployment and retirement
26 benefits, if any, and of monitoring and otherwise
27 administering contract performance. If the designated bidder
28 proposes to perform any or all of the contract outside the
29 boundaries of the State, the contract cost shall be increased
30 by the amount of income tax revenue, if any, that will be
31 lost to the State by the corresponding elimination of agency
32 employees, as determined by the Department of Revenue to the
33 extent that it is able to do so.

34 (e) The head of the agency shall certify in writing

1 that:

2 (1) he or she has complied with all provisions
3 of this Section and of all other applicable laws;

4 (2) the quality of the services to be provided
5 by the designated bidder is likely to satisfy the
6 quality requirements of the statement prepared
7 pursuant to this Act, and to equal or exceed the
8 quality of services that could be provided by
9 regular agency employees;

10 (3) the contract cost will be at least 10% less
11 than the estimated cost, taking into account all
12 comparable types of costs and all the additional
13 costs of the contract as specified in this Act; and

14 (4) the proposed privatization contract is in
15 the public interest and meets the applicable quality
16 and fiscal standards set forth in this Act.

17 Any privatization contract entered into by a State agency
18 and the agency certification described above shall be a
19 public record and subject to disclosure pursuant to the
20 Freedom of Information Act.

21 Section 25. Monitoring and enforcement of privatization
22 contracts.

23 (a) No contractor shall award a subcontract for work
24 under a contract or an amendment to a contract without the
25 approval of the selection of the subcontractor and the
26 provisions of the subcontract by agency head or his or her
27 designee.

28 (b) Each contractor shall file a copy of executed
29 subcontract or amendment to the subcontract with the agency.
30 The agency shall maintain the subcontract or amendment as a
31 public record.

32 (c) Any private contractor awarded a privatization
33 contract, and any subcontractor to a private contractor

1 subject to these provisions, shall file with the agency head
2 copies of financial audits of the private contractor prepared
3 by independent, certified public auditors at least annually
4 during the course of the contract term.

5 (d) All privatization contracts shall include a contract
6 provision specifying that in order to determine compliance
7 with these principles, as well as the contract, the private
8 contractor shall be required to provide the State or its
9 agents reasonable access through representatives of the
10 private contractor to facilities, records, and employees that
11 are used in conjunction with the provision of contract
12 services, except where prohibited by federal or State laws,
13 regulations, or rules.

14 (e) The private contractor shall submit a report, not
15 less than annually during the term of the privatization
16 contract, detailing the extent to which the contractor has
17 achieved the specific quantity and standard of quality of the
18 subject services as specified by the agency and its
19 compliance with all federal, State, and local laws including
20 any complaints, citations, or findings issued by
21 administrative agencies or courts.

22 (f) The State agency may seek contractual remedies for
23 any violation of a privatization contract. In addition, if a
24 contractor fails to comply with the wage standards,
25 employment provisions or union provisions in this Act, any
26 person or entity aggrieved by the violation may bring a claim
27 for equitable and other relief including backpay. In any
28 lawsuit brought for reasons listed in this subsection, an
29 aggrieved person or entity shall be entitled to costs and
30 attorney fees.

31 Section 30. Compliance; privacy actions.

32 (a) Public records that a contractor, subcontractor,
33 employee, or agent possesses, modifies, or creates pursuant

1 to a privatization contract shall at all times and for all
2 purposes remain the property of the State. A contractor,
3 subcontractor, employee, or agent of a contractor or
4 subcontractor shall have no ownership rights or interest in
5 any public records that the contractor, subcontractor,
6 employee, or agent possesses, modifies, or creates pursuant
7 to a contract, subcontract, or amendment to a contract or
8 subcontract and shall not impair the integrity of any public
9 record that the contractor, subcontractor, employee, or agent
10 possesses or creates.

11 (b) Any public record that a State agency provides to a
12 contractor or subcontractor or that a contractor or
13 subcontractor creates shall be and remain a public record for
14 the purposes of the Freedom of Information Act and the
15 enforcement provisions of that law shall apply to any failure
16 to disclose records under this Section.

17 (c) A private contractor who fails to disclose a record
18 that the privatization contract requires to be disclosed or
19 that the State agency directs to be disclosed shall be liable
20 to the State agency for any fines or penalties assessed
21 against the agency for the violation of the Freedom of
22 Information Act concerning that record.

23 (d) No contractor or subcontractor or employee or agent
24 of a contractor or subcontractor shall disclose to the public
25 any public records that it possesses, modifies, or creates
26 pursuant to a contract, subcontract, or amendment to a
27 contract and that the State agency:

28 (1) is prohibited from disclosing pursuant to State
29 or federal law in all cases;

30 (2) may disclose pursuant to State or federal law
31 only to certain entities or individuals or under certain
32 conditions; or

33 (3) may withhold from disclosure pursuant to State
34 or federal law. No provision of this subsection shall be

1 construed to prohibit any contractor from disclosing
2 public records to any of its subcontractors to carry out
3 the purposes of its subcontract.

4 (e) No contractor, subcontractor, employee, or agent of a
5 contractor or subcontractor shall sell, market, or otherwise
6 profit from the disclosure or use of any public records that
7 are in its possession pursuant to a contract, subcontract, or
8 amendment to a contract or subcontract, except as authorized
9 in the contract, subcontract, or amendment.

10 (f) Any contractor or subcontractor, or employee or agent
11 of a contractor or subcontractor, that learns of any
12 violation of the provisions of this Act shall, no later than
13 7 calendar days after learning of the violation, notify the
14 agency head and the Attorney General of the violation.

15 (g) In addition to any remedies provided under the
16 Freedom of Information Act, if any person violates any
17 provision of subsections (a) or (b) of this Section, the
18 Attorney General may bring an action against that person
19 seeking damages on behalf of the State for the violation,
20 restitution for damages suffered by any person as a result of
21 the violation, or imposition and recovery of a civil penalty
22 of not more than \$50,000 for the violation.

23 In addition to the remedies that may be brought by the
24 Attorney General, any person aggrieved by a violation of any
25 provision of subsections (a) or (b) of this Section may bring
26 an action in any State court to recover any damages suffered
27 as a result of the violation.

28 In any action brought under this subsection, the court
29 may:

30 (1) order disgorgement of any profits or other
31 benefits derived as a result of a violation of any
32 provision of subsections (a) or (b) of this Section;

33 (2) award punitive damages, costs, and reasonable
34 attorneys' fees; and

1 (3) order injunctive or other equitable relief.
2 Proof of public interest or public injury shall not be
3 required in any action brought under this subsection (g).
4 No action may be brought more than 3 years after the
5 occurrence of the violation.

6 Any person who knowingly and willfully violates any
7 provision of subsections (a) or (b) shall be guilty of a
8 Class 3 felony.

9 Section 35. Prohibition against discrimination.

10 (a) No person shall retaliate or discriminate in any
11 manner against any public employee or employee of a private
12 contractor because that employee, or any person acting on
13 behalf of the employee, acting in good faith:

14 (1) engaged in any disclosure of information
15 relating to the services provided by a private contractor
16 pursuant to a privatization contract;

17 (2) advocated on behalf of service recipients with
18 respect to the care or services provided by the private
19 contractor; or

20 (3) initiated, cooperated, or otherwise participated
21 in any investigation or proceeding of any governmental
22 entity relating to the services provided pursuant to a
23 privatization contract.

24 (b) No person shall retaliate or discriminate in any
25 manner against any public employee or employee of a private
26 contractor because the employee has attempted or has an
27 intention to engage in an action described in subsection (a)
28 of this Section.

29 (c) No person shall by contract, policy, or procedure
30 prohibit or restrict any employee of a private contractor
31 from engaging in any action for which a protection against
32 discrimination or retaliation is provided under this Section.

33 (d) This Section does not protect disclosures that would

1 violate federal or State law or diminish or impair the rights
2 of any person to the continued protection of confidentiality
3 of communications provided by State or federal law.

4 (e) With respect to the conduct described in subsection
5 (a) of this Section, an employee of a private contractor
6 shall be considered to be acting in good faith if the
7 employee reasonably believes that the information is true and
8 the information disclosed by the employee: (i) evidences a
9 violation of any law, rule, or regulation, or of a generally
10 recognized professional or clinical standard; or (ii) relates
11 to the care, services, or conditions that potentially
12 endanger one or more recipients of service or employees
13 employed pursuant to a privatization contract.

14 (f) The identity of an employee of a private contractor
15 who complains in good faith to a government agency or
16 department or any member or employee of the State legislature
17 about the quality of services provided by a private
18 contractor shall remain confidential and shall not be
19 disclosed by any person except upon the knowing written
20 consent of the employee of the private contractor and except
21 in the case where there is imminent danger to health or
22 public safety or an imminent violation of criminal law.

23 (g) Any current or former public employee or employee of
24 a private contractor who believes that he or she has been
25 retaliated or discriminated against in violation of
26 subsections (a), (b), or (c) of this Section may file a civil
27 action in any State court of competent jurisdiction against
28 the person believed to have violated these subsections.

29 (h) If the court determines that a violation of this
30 Section has occurred, the court shall award any damages that
31 result from the unlawful act or acts, including compensatory
32 damages, reinstatement, reimbursement of any wages, salary,
33 employment benefits, or other compensation denied or lost to
34 such employee by reason of the violation, as well as punitive

1 damages, attorneys' fees, and costs, including expert witness
2 fees. The court shall award interest on the amount of damages
3 awarded at the prevailing rate.

4 (i) The court may issue temporary, preliminary, and
5 permanent injunctive relief restraining violations of this
6 Act, including the restraint of any withholding of the
7 payment of wages, salary, employment benefits, or other
8 compensation, plus interest, found by the court to be due and
9 the restraint of any other change in the terms and conditions
10 of employment and may award any other equitable relief as may
11 be appropriate, including employment, reinstatement, and
12 promotion.

13 (j) An action may be brought under this subsection not
14 later than 2 years after the date of the last event
15 constituting the alleged violation for which the action is
16 brought.

17 (k) Any person who violates a provision of subsections
18 (a), (b), or (c) of this Section shall be subject to a civil
19 penalty of not to exceed \$10,000 for each violation. In
20 determining the amount of any penalty under this subsection,
21 the appropriateness of the penalty to the size of the
22 business of the person charged and the gravity of the
23 violation shall be considered. The amount of any penalty
24 under this subsection, when finally determined, may be
25 deducted from any sums owing by the State to the person
26 charged or ordered to be paid to the employee or employees
27 who suffered retaliation or discrimination, as ordered by the
28 court.

29 (l) In any civil action brought under this Act, the
30 complainant shall have the initial burden of making a prima
31 facie showing that any behavior described in subsections (a),
32 (b), or (c) of this Section was a contributing factor in the
33 adverse action or inaction alleged in the complaint. A prima
34 facie case shall be established if the complainant can show

1 that the respondent knew of the complainant's protected
2 activities at the time that the alleged unfavorable action or
3 inaction was taken and the discriminatory action occurred
4 within a period of time that a reasonable person could
5 conclude that an activity protected by subsections (a), (b),
6 or (c) of this Section was a contributing factor in the
7 discriminatory treatment. Once the complainant establishes a
8 prima facie case, the burden shifts to the respondent to
9 demonstrate, by clear and convincing evidence, that it would
10 have taken the same adverse action or inaction in the absence
11 of such behavior.

12 (m) Each private contractor shall post and keep posted,
13 in conspicuous places on its premises where notices to
14 employees and applicants for employment are customarily
15 posted, a notice, to be prepared or approved by the
16 secretary, setting forth excerpts from, or summaries of, the
17 pertinent provisions of this Act and information pertaining
18 to the filing of a charge under this Section. Any employer
19 that willfully violates this Section may be assessed a civil
20 penalty not to exceed \$100 for each separate offense.

21 Section 40. Nonpreemption. Nothing in this Act preempts
22 any other law, and nothing in this Act shall be construed or
23 interpreted to impair or diminish in any way the authority of
24 any locality, municipality or subdivision to enact and
25 enforce any law that provides equivalent or greater
26 protections for its employees.

27 Section 45. Severability. If any provision of this Act
28 or its application to any person or circumstances is held to
29 be invalid, the invalidity of that provision or application
30 does not affect other provisions or applications of this Act
31 that can be given effect without the invalid provision or
32 application.

1 Section 99. Effective date. This Act takes effect upon
2 becoming law.